

LANDOWNERS RIGHTS AND MINERAL LEASES

Session Summary

North Dakota Representative Wes Belter, Moderator
Can Brockett, Penn State Marcellus Shale Education Team
Ryan Lance, Crowell & Moring, Wyoming

Dan Brockett gave background information on the science of hydraulic fracturing and its use in Pennsylvania, where they have 7 different shale formations. The state currently produces 13 billion cubic feet of natural gas per day and the state's resources are only about 10% developed. This industry is developing faster in the U.S. because no other country has deep financial markets, transmission pipelines in place, and policies that encourage development and compensates land owners. Policy consideration for states looking at leasing issues include: are the agreements fair to all parties; are the regulations clear; what are the land use and environmental impact issues (e.g., what will be the impact on public, private and agriculture lands from new transmission lines); should the state get involved when landowners want to renegotiate existing contracts; farm estate taxation issues; the volatility of leasing markets; and energy policy and energy use. Specific agriculture Issues include: what are the overall effects on agriculture; loss of agricultural lands to pipelines and other infrastructure. Mr. Brockett noted that many of these issues can be resolved by bringing various stakeholders together to speak with each other and become educated on the issues.

Ryan Chase discussed the development of the hydraulic fracturing industry in Wyoming. He cautioned that the public and policymakers need to understand the issues before engaging the oil and gas industry in negotiations. The government is a poor surrogate for private negotiation. When the government skews the market, it leads to unsettled law and policy that can last for years. And the fast-paced nature of technology advancements can create regulatory challenges as well. In Wyoming, the state's conservation act established the Oil and Gas Commission—made up of the governor, state land commissioner, state geologist, a geologist and an engineer—is responsible for protecting citizens' rights and reducing waste. The Surface Owner Accommodation Act establishes requirements for how oil and gas companies access private land, ensuring landowners receive proper notice and compensation. Wyoming's Royalty payment Act requires payment of royalties to landowners on time and includes an 18% interest rate penalty for non-compliance. To ensure the operators have funding to mitigate against any damages to surrounding land, bonding has been put in place for environmental damages, seismic activity and idle wells. The state even has authorized owners to set up a dead cow fund. Although in Wyoming just under 12 billion gallons of water and 11 billion pounds of sand have been injected underground, they have not seen one confirmed impact to groundwater. The state requires that fracking happen below water bearing zone and that wells be secure with cement to ensure chemicals cannot resurface. Pipelines and common carrier liability will be tremendous issues moving forward.

Questions addressed landowner compensation programs for pipelines; and the challenges of developing oil and gas operations in areas where land titles are fractionalized.